

Neutral Citation No. [2008] NILST 12

Ref: **KER7184**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **26/05/2008**

Tariff certified by the Secretary of State under Life Sentences (NI) Order
2001 on 09-07-08

THE QUEEN

-v-

NICHOLAS EVANS

DECISION ON TARIFF

Ruling by Kerr LCJ

KERR LCJ

Introduction

1. On 30 October 1992 the prisoner, (who was 22 years old at the time of the offence), was sentenced to life imprisonment after a trial by Higgins J sitting without a jury at Belfast Crown Court. He had pleaded not guilty to the murder of Francis Paul Taggart in Lisburn on 17 March 1991. The victim was 17 years old. The prisoner's appeal against conviction was dismissed by the Court of Appeal on 16 September 1994.

2. The prisoner has been in custody since 20 March 1991, apart from a period between 20 November 1999 when he was released on licence until the suspension of the licence on 9 February 2005; he had spent 5 years and 2 months on licence. For the purposes of calculating the expiry date of the minimum term that will be certified by the Secretary of State under the Life Sentences (Northern Ireland) Order 2001, he is to be taken as having served 17 years and some months in custody to date.

3. On 10 March 2008 I heard oral submissions on behalf of the prisoner in relation to the tariff to be set under article 11 of the 2001 Order. The tariff represents the appropriate sentence for retribution and deterrence and is the length of time the prisoner will serve before his case is sent to the Life Sentence Review Commissioners who will then assess his suitability for release on the basis of risk.

Background to the offence

4. On the day of the murder the prisoner met in Lisburn, in a chance encounter, five individuals whom he knew and he stopped to talk to them. One of the individuals left the group. Another, Jackie Allen, said he was going "to do a Catholic tonight" and at this point he spotted Francis Taggart leaving a chip shop near to where they were then standing. Allen said that he was to be the victim and asked the prisoner if he would "give a hand". The prisoner agreed to do this.

5. During police interviews the prisoner was asked whether Allen had said he was going to kill a Catholic or Francis Taggart. The prisoner answered 'Francis Taggart'. He explained that Allen had said that 'Taggs' (by which nickname the victim was known) was "a mouth and needed to be taught a lesson". The prisoner was asked if this was a sectarian killing. He said that it was not and denied membership of the loyalist organisations, UDA, UVF and UFF but he admitted that the others involved in the attack were in the UDA and UFF, as far as he knew. He later said that the killing was not on behalf of a paramilitary organisation but that it was just because the victim was a Catholic.

6. The prisoner and the four other members of the group followed Francis Taggart and then chased him. When they caught him they punched and kicked him. Allen stabbed the victim four or five times and passed the knife to the prisoner who said 'no way'. According to Evans, Allen then said, 'you'd need to cause there'll be more than four of us that'll get you'. The prisoner took the knife and stabbed the victim twice in his stomach. Then another member of the group took the knife and stabbed the victim repeatedly. The prisoner then ran home. When he got home he told his sister and two others who were there that if the police asked them any questions they should tell them that he was in all night.

7. The prisoner was arrested and formally charged on 20 March 1991. In police interviews on 20 and 21 March 1991 he repeatedly denied involvement in the murder until finally admitting having participated in it during the second police interview on 22 March 1991.

8. On his trial the prisoner alleged that he had been subjected to violence or threats of violence by the interviewing officers to induce him into making an admission. A voir dire hearing took place. The trial judge decided that the prisoner was an unimpressive witness who told lies when it suited him and concluded that he had not been subjected to torture or inhumane or degrading conduct or violence or threats of violence by the detectives. He held that the prisoner's confessions were not induced by torture etc and there was no justification for the exclusion of his confessions. The judge expressed himself satisfied beyond reasonable doubt that the defendant had taken part with the other assailants in the apprehension of and assault on the deceased which led to his death.

9. The main ground of appeal was that the forensic evidence did not support the case that the prisoner had participated in the attack. It was argued that, given the extent and nature of the victim's wounds and the presence of blood on his clothing, on the ground and on the wall, blood would inevitably have got onto the appellant's clothing if he had participated in the attack. The evidence, however, only revealed an unidentifiable blood source inside the right cuff of the black/orange anorak which the appellant said he was wearing on 17 March. The trial judge had attached no importance to this finding.

10. The Court of Appeal concluded that the assault (the frenzied stabbing by the person known as "Victor") which led to the blood splashing on the wall occurred after the prisoner had run off. The court was entirely satisfied, however, that the learned trial judge was fully entitled to convict the appellant of the murder.

Post mortem examination

11. A post mortem examination was carried out by Dr Carson, Deputy State Pathologist on 18 March 1991. The relevant passages from his report are these:-

"This youth was of average to good build for his age, weighing 142 pounds and measuring 5 feet 10 inches in height. He was healthy; there was no natural

disease to cause or accelerate death or to cause collapse.

Death was a result of multiple stab wounds, all apparently made by a knife with a narrow blade, the deepest wound measuring 7 cm. Some of the wounds were superficial only, causing no internal injury, whilst others had pierced the neck structures, opening into the voice-box, and others had penetrated the body cavities, damaging the heart, aorta, right lung, liver, right kidney and bowel. Death was due to the combined effects of these deeper wounds. It need not have been immediate but is unlikely to have been long delayed.

In total there were about 60 stab wounds, distributed mainly on the neck, chest and abdomen. Many were in groups and those in each group tended to have the same general direction, suggesting that they were caused by successive thrusts whilst the assailant remained in the same position. There was some variation in direction between the groups and the presence of wounds on both the back and front of the body indicated active or passive movement of the deceased during the course of the stabbing.

In addition to the stab wounds there were two very shallow incised wounds across the front and sides of the neck, also made by the blade of a knife but not causing serious injury.

The knife wounds apart, there were other surface injuries, including areas of bruising and abrasion on the face, lips, chest, back and right upper and lower limbs. These were mostly fairly trivial injuries but taken as a whole they suggested that the deceased had been subjected to some rough treatment prior to his death. There was nothing to indicate specifically how these injuries were caused but they were fairly characteristic of those sustained in a struggle and caused by blows from fists, kicks and contact with the ground. They played no part in the death.

The report of the Forensic Science Laboratory shows that at the time of his death there was a considerable amount of alcohol in the body, especially in view of his age. This did not contribute directly to the death but could have rendered him more vulnerable to apprehension and assault by others."

The prisoner's antecedents

12. The prisoner has an extensive criminal record for robbery, burglary, theft and driving offences. He also has a conviction for cruelty to animals in 1987 (when he was 19 years old) for which he received a sentence of two months' imprisonment. During his time on release on licence he was convicted of numerous driving offences, including driving with excess alcohol. During this period also he was convicted of disorderly behaviour, breach of a non-molestation order (in 2002 and 2004), criminal damage, possessing an offensive weapon in a public place (in 2002 and 2005), indecent exposure, indecent behaviour, theft, and taking a motor vehicle without consent.

Representations

13. The victim's surviving parent, his mother, indicated that she did not wish to make representations. The prisoner's solicitors have made written submissions and oral arguments were presented on his behalf on 10 March 2008. I have taken all of these closely into account.

Practice Statement

14. In *R v McCandless & others* [2004] NICA 1 the Court of Appeal held that the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412 should be applied by sentencers in this jurisdiction who were required to fix tariffs under the 2001 Order. The relevant parts of the *Practice Statement* for the purpose of this case are as follows: -

"The normal starting point of 12 years

10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in para 12. Exceptionally,

the starting point may be reduced because of the sort of circumstances described in the next paragraph.

11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).

The higher starting point of 15/16 years

12. The higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as: (a) the killing was 'professional' or a contract killing; (b) the killing was politically motivated; (c) the killing was done for gain (in the course of a burglary, robbery etc.); (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness); (e) the victim was providing a public service; (f) the victim was a child or was otherwise vulnerable; (g) the killing was racially aggravated; (h) the victim was deliberately targeted because of his or her religion or sexual orientation; (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing; (j) extensive and/or multiple injuries were inflicted on the victim before death; (k) the offender committed multiple murders.

Variation of the starting point

13. Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.

14. Aggravating factors relating to the offence can include: (a) the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

16. Mitigating factors relating to the offence will include: (a) an intention to cause grievous bodily harm, rather than to kill; (b) spontaneity and lack of pre-meditation.

17. Mitigating factors relating to the offender may include: (a) the offender's age; (b) clear evidence of remorse or contrition; (c) a timely plea of guilty.

Very serious cases

18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the

result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

19. Among the categories of case referred to in paragraph 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate."

Conclusions

15. This is clearly a higher starting point case. Several of the factors adumbrated in paragraph 12 of the *Practice Statement* are present. The victim was entirely vulnerable to this egregious attack on him. He plainly could not have offered any effective resistance to the combined and concertedly applied strength of four young men. He was targeted solely because of his religion. Gratuitous violence was inflicted and many injuries were sustained before death. This was a wholly sadistic, ferocious and barbaric attack with the plain intention of doing to death a young man solely because he was Catholic.

16. The killing was not planned for a long time before it actually occurred and to some extent it was opportunistic but this relates only to the choice of the victim. Mr Taggart was pitifully unfortunate in that he happened to become available to this gang bent on murder but it is quite clear that the prisoner, although he professed to be a reluctant participant and to be the subject of a form of duress, knew before the victim was targeted of the murderous intent of Allen and the others and he agreed to take part in what inevitably was a savage murder. The foreknowledge that there was a definite and deliberate intention to kill must be regarded as an aggravating factor in relation to the offence. It seems to me also that the use of a knife must be regarded as enhancing the seriousness of the offence. Although the *Practice Statement* refers to the use of a firearm as aggravating the

offence and there is no express reference to a knife in that context, the knife wielded in this case was just as lethal as would have been a firearm and, as has repeatedly been made clear (including in the text of the *Practice Statement* itself), its terms are not intended to be exhaustive of all the aggravating or mitigating factors that might be identified in a particular case.

17. The prisoner's previous record must also be regarded as an aggravating factor personal to him. His subsequent offending must, of course, be left out of account for these purposes.

18. There is little to be discerned by way of mitigation. One can find scant reason for concluding that the prisoner has exhibited any genuine remorse. The declaration that appeared at the end of his statement to the police, 'I'm very sorry it ever happened' is as consistent with sorrow at his own plight as indicating any true repentance or sympathy to the family of his unfortunate victim. Moreover, he stoutly asserted his innocence of the crime throughout his trial and the appeal against his conviction.

19. The claim that he participated in this attack reluctantly and that he ran away before the merciless attack by the person who finally wielded the knife occurred must be taken into account in assessing his culpability but are not mitigating factors in the strict sense. Some regard must be had to these circumstances and to the fact that the prisoner was relatively young at the time that this dreadful murder occurred but there can be no doubt that he knew that a murderous attack on a Catholic was planned and that he agreed to take part. The weight to be attached to his claimed disinclination to become involved and that he was not present when the final awful assault happened must be viewed against that background.

20. The presence of a number of factors outlined in paragraph 12 of the *Practice Statement* prompts the conclusion that this qualifies for the description 'very serious case' within the terms of paragraph 18. A substantial upward adjustment of the tariff is therefore warranted. It is to be noted that the *Practice Statement* contemplates that this may be to a period of thirty years.

21. I have also concluded that this was a terrorist crime and that paragraph 19 of the *Practice Statement* applies. The prisoner may not have been a member of any of the paramilitary organisations that were referred to in his interviews with the police, but this does not derogate from the fact that

those who proposed and instigated this attack were members of those organisations and he well knew that. The claim that this murder was not carried out on behalf of a paramilitary organisation does not make it any less a terrorist crime. The suggestion that it was not a sectarian crime is preposterous in light of the admission by the prisoner that Mr Taggart was chosen because he was Catholic.

22. A term of twenty years and upwards for terrorist crime is suggested. It seems to me that paragraphs 18 and 19 of the *Practice Statement* are to be applied disjunctively although one must guard against the possibility of double counting in doing so and that ultimately, it is necessary to engage in an exercise akin to that involved in assessing the proportionality of the global sentence when imposing consecutive sentences. Taking all these factors into account, I have decided that the minimum term in this case should be twenty years. This will include the time spent on remand.